HEALTH CARE REFORM/Long-Term and Emergency Care, OB-GYNs, Specialists

SUBJECT: **Patients' Bill of Rights Act . . . S. 1344. Collins amendment No. 1243, as amended.**

ACTION: AMENDMENT AGREED TO, 54-46

SYNOPSIS: As introduced, S. 1344, the Patients' Bill of Rights Act, contains the text of S. 6, a health insurance regulation bill proposed by Senator Kennedy and other Democrats. The bill: will regulate the structure and operation of all health insurance products at the Federal level; will impose extensive mandates on consumers, health insurers, and employers; and will create new rights to sue employers and insurers for unlimited compensatory and punitive damages. As estimated by the Congressional Budget Office (CBO), this Democratic plan will cause insurance premiums to rise by an average of 6.1 percent (which will be in addition to any increases from inflation or other causes). The 6.1-percent cost increase, which will total $72 billion over 5 years, will cause approximately 1.8 million Americans to lose their health insurance coverage.

The Collins amendment, as amended, would expand the deductibility of long-term care insurance to individuals, would expand direct access to obstetric and gynecological care, would provide timely access to specialists, and would expand patient access to emergency medical care. Details are provided below.

- Long-term care deductibility: long-term care health insurance costs for employees are deductible; the amendment would expand that deductibility to cover long-term care benefits offered through "cafeteria" health insurance plans provided by employers, and by allowing individuals to deduct all of their long-term health insurance costs if those costs were not subsidized by their employers; this part of the Collins amendment would provide $5.4 billion in tax relief over 5 years to 3.8 million taxpayers.
- Obstetric and gynecological care: federally regulated group health plans that required referrals from primary care physicians before specialty care could be provided would have to waive that requirement for patients that sought coverage for obstetrical care or for routine gynecological care, and could waive that requirement for related care ordered by an obstetrician or gynecologist.
- Timely access to specialists: a federally regulated group health plan that provided a benefit or service would have to ensure that participants and beneficiaries had timely access, in accordance with the medical exigencies of their cases, to primary and specialty health care professionals, when appropriate, to provide services for covered benefits; health plans could not require an

(See other side)

YEAS (54)

Republicans (54 or 98%)		Democrats (0 or 0%)
Abraham	Hutchinson	
Allard	Hutchison	
Ashcroft	Inhofe	
Bennett	Jeffords	
Bond	Kyl	
Brownback	Lott	
Bunning	Lugar	
Burns	Mack	
Campbell	McCain	
Cochran	McConnell	
Collins	Murkowski	
Coverdell	Nickles	
Craig	Roberts	
Crapo	Roth	
DeWine	Santorum	
Domenici	Sessions	
Enzi	Shelby	
Fitzgerald	Smith, Bob (I)	
Frist	Smith, Gordon	
Gorton	Snowe	
Gramm	Specter	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thompson	
Hagel	Thurmond	
Hatch	Voinovich	
Helms	Warner	

NAYS (46)

Republicans (1 or 2%)	Democrats (45 or 100%)	
Chafee	Akaka	Kennedy
	Baucus	Kerrey
	Bayh	Kerry
	Biden	Kohl
	Bingaman	Landrieu
	Boxer	Lautenberg
	Breaux	Leahy
	Bryan	Levin
	Byrd	Lieberman
	Cleland	Lincoln
	Conrad	Mikulski
	Daschle	Moynihan
	Dodd	Murray
	Dorgan	Reed
	Durbin	Reid
	Edwards	Robb
	Feingold	Rockefeller
	Feinstein	Sarbanes
	Graham	Schumer
	Harkin	Torricelli
	Hollings	Wellstone
	Inouye	Wyden
	Johnson	

NOT VOTING (0)

Republicans (0)	Democrats (0)

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

authorization by a case manager or primary care provider for speciality services unless such required authorization was for an adequate number of referrals (for instance, for radiation therapy for cancer an adequate number of referrals for treatment would have to be given rather than requiring a separate referral for each radiation treatment); a plan could only require the development of a treatment plan for speciality care for a patient if that plan was developed by the specialist, the case manager or primary care provider, and the patient, was approved in a timely manner, and was in accordance with the applicable quality assurance and utilization standards of the plan; speciality care would be defined to include age-appropriate medical care; speciality care services, whether provided by specialists within the network or outside of it, would be provided using the in-network cost-sharing schedule.

- Access to emergency care: a federally regulated group health plan would have to provide coverage without preauthorization for emergency medical care that a "prudent layperson" would deem necessary (a "prudent layperson" would be defined as someone possessing an average knowledge of health and medicine) except for items or services that were explicitly excluded from coverage; the patients' costs for emergency care received from an out-of-network provider could not be any greater than they would have been from an in-network provider; the plan would be required to pay for emergency medical screening, emergency ambulance services, and additional emergency medical care needed to stabilize an emergency medical condition; a health plan would also be required to pay for services by an out-network provider to maintain medical stability of a patient if those services were covered by the plan, were provided for care related to an emergency medical condition and in an emergency department, and were provided after "the nonparticipating provider contacted the plan regarding approval for such services;" in any case in which the plan failed to respond within 1 hour to a nonparticipating provider regarding services to maintain medical stability after emergency treatment, the plan would be liable for the costs of those services; this section would not be construed as limiting in-network cost-sharing.

As amended, the Collins amendment would strike the Kennedy bill provisions providing for unlimited compensatory and punitive damage suits against health plans and employers that voluntarily provided health insurance to their employees (see vote No. 206).

Those favoring the amendment contended:

This amendment would enact four health care reforms. First, it would make expand the deductibility of long-term health care insurance by allowing individuals to deduct their long-term health care insurance costs. This tax reform is greatly needed. With nursing home costs ranging from $40,000 to $70,000 per year, a chronic illness requiring long-term care can easily bankrupt a family, and it can also result in taxpayers eventually having to pick up the costs through the Medicaid program. We should encourage Americans to plan for their long-term care needs by buying insurance. A couple of years ago we passed legislation to encourage employers to purchase such insurance for their employees; it makes just as much sense to give this benefit to self-employed individuals and their families. Some Senators have complained about the "cost" of this provision, comparing it to the cost of the increased spending in the Democratic bill. We reject that comparison. This proposal will give back to the American people, in tax relief, part of the excess taxes (over and above the Social Security surplus) that the Government will collect in the next 10 years. Republicans favor giving the money back; Democrats favor spending it. The next three sections would enact patient protections for federally regulated health plans. Our Democratic colleagues have again complained that we would not apply these regulations to State-regulated plans as well, and we again explain that we oppose costly and duplicative regulations for those plans. The first of these three sections would remove gatekeeper requirements that some plans have for women going to obstetricians for care or to gynecologists for routine care. The amendment would not require health plans to allow obstetricians and gynecologists, who are specialists, to be designated as primary care physicians. That mandate, which is favored by Democrats, would be too severe. Specialists of any type are not necessarily trained to serve as generalists, and we should not mandate that they must. Next, the amendment would make sure that health plans give patients timely access to specialists for covered benefits. Barriers to their getting to specialists quickly and to seeing them repeatedly when needed would be removed, and, when they saw specialists, they would be charged in-network prices, even when their providers were outside of their health insurance networks. The final provision of the amendment would remove barriers to people getting emergency treatment. The main difference between this amendment and the Democrat amendment (see vote No. 201) is that this proposal would limit the post-stabilization services that would be required to just services related to the emergency events. In other words, if someone went to an emergency room with chest pains and found out he just had indigestion, the health plan would have to pay for the treatment related to the tests on his chest pains, but not for unrelated tests. Under the previous amendment, a health insurer would have had to pay for such unrelated post-stabilization health care. We strongly favor the provisions of this amendment and urge its adoption.

Those opposing the amendment contended:

The first part of this amendment would cost a great deal of money. Our Republican colleagues tell us that they will propose an offset in the final, substitute amendment that they are allowed to offer under the unanimous consent agreement governing the consideration of this bill, but we still think it is irresponsible to offer the amendment without telling us what the offset will be at the same time. As for the other three proposals, they are all watered-down versions of Democrat proposals, and even then they only would apply to those Americans covered by self-insured health plans. This amendment would waste money and would provide inadequate protections in several key areas. We therefore strongly urge its rejection.